IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Shravan Kumar
Vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.7095/2003 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 22nd December, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.S.P. Sharma, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy. Govt. Advocate.

BY THE COURT

The petitioner has raised the grievance that even though she applied for appointment on the post of Physical Teacher Gr.III yet the respondents have illegally denied her right to

consideration for appointment.

According to the petitioner, respondents prepared a provisional merit list in which petitioner's rank was at serial No.73. He was entitled to be called for interview by the selection committee and in face call letter was issued to him on 28th August, 2003 by the District Education Officer Secondary-I Alwar. According to this letter, the petitioner was required to appear for interview at 10:00 AM on 03rd September, 2003. But unfortunately office of District Education Officer Secretary-I, Alwar dispatched the letter dated 28th August, 2003 as delayed as 01st September, 2003 to the petitioner at the address in village Dabla, Tehsil Raisinghnagar, District Sriganganagar where it was received on 05th September, 2003. There was no possibility for the petitioner therefore to appear for the interview at 10:00 AM on 03rd September, 2003. Immediately a receipt of the call letter he personally went to Alwar and met the respondent No.3 when nothing was done, he submitted a representation/complaint to him on 11th September, 2003 by registered post comprising him for the reasons for her absence

in interview. Hence the writ petition.

The contention of the respondents is that the call letter was sent to the petitioner for interview on 03rd September, 2003 infact it was mentioned that advertisement inviting application itself in its para 6 stated that the committee should be required to appear in interview on 03rd September, 2003 and call letter was a mere formality. It is stated that news item in regard to the interview was also published in Rajasthan Patrika in its issue dated 03rd September, 2003 but inspite of all this petitioner did not appear for interview. He has to blame himself.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner argued that when the petitioner had applied and was in want of employment, there was no reason for him not to appear for interview if only the information about the same was received on him time. The

interview letter was dispatched on 01st September, 2003 from Alwar therefore it cannot be expected to reach village Dabla on 02nd September, 2003 as the interview was fixed on 03rd September, 2003. Interview was a mere formality otherwise merit of the petitioner was available with the respondents. According to the such merit, the appointment was to be made by the respondents. The petitioner has therefore been wrongly denied appointment.

Learned counsel for the petitioner has relied upon the judgments of this Court in Surendra Kumar vs. State of Rajasthan & Ors. in S.B. Civil Writ Petition No.2749/2004 decided on 23rd September, 2005 and Alka Bohra vs. State of Rajasthan & Ors. in S.B. Civil Writ Petition No.1767/1994 decided on 18th January, 1999 in support of his arguments.

On the other hand, learned Dy. Govt. Advocate argued that already advertisement by which applications for appointment were called had indicated in advance that the interview shall be conducted on 03rd September, 2003. There

was no need to sent any separate communication. This communication was only in addition to what was already conveyed by way of aforesaid advertisement. Therefore, in the newspaper of 03rd September, 2003 itself by which it was published that interview were to be held on 03rd September, 2003.

Relying upon the judgments of this Court in Narendra KR. Sharma & Ors. vs. State & Another reported in 2006 (3) WLC 586 and in State of U.P. & Ors. vs. Raj Kumar Sharma & Ors. reported in 2006 (3) SCC 330 he argued that when the selection list has expired, no mandamus directing for appointment can be given in the present case. According to the learned counsel the life of the merit list has expired. While relying upon the judgments, learned counsel for the petitioner has argued that those judgments were rendered for consideration of facts obtaining in those cases and are not applicable to the present case. It is therefore argued that the writ petition be dismissed.

I have considered the arguments advanced by learned counsel for the parties and perused the record.

The basic facts which have been averred by the writ petition have not been denied by the respondents in their counter affidavit. The call letter was dispatched by the respondents from Alwar on 01st September, 2003 in which he was required to appear for interview on 03rd September, 2003 and call letter was received by the petitioner on 05th September, 2003. So far as the judgments relied upon the by respondents with regard to life/validity of the merit is concerned, that would be altogether different point for consideration. It should be noted that present one is not a case where this Court is called upon to examine whether the any candidate can claim appointment merely on the basis of inclusion of his name in the select merit list. This is a case where the candidate was called for interview and the very letter requiring him to appear for interview was dispatched so inordinately delayed that it was received by the candidate two days after the date of interview.

This Court in Surendra Kumar (supra) on consideration of some what similar case held as under:-

> **"12.** It is admitted position that the petitioner was eligible candidate and in view of eligibility, his candidature was required to be considered in the interview held on 29.3.2004. It is evident from Annex.2 that the call letter was received by the Chanana Post Officer on 29.3.2004 at 2.30 p.m., which was delivered at the postal address of the petitioner, on the same day, at 4.00 p.m. Thus, it is amply clear that the petitioner received the delayed call letter on account of no fault on his part, but delay as well as fault was on the part of the respondents. It is also evident from Annex.3 – the telegram, sent by the District Education Officer, Secondary-I, Alwar, whereby the petitioner was required to appear for interview on 29.3.2004, that it was delivered to the petitioner on 30.3.2004, at 3.40 p.m., on account delay and fault on the part of the respondents, whereas the interview had taken place on 29.3.2004. So far as the publication of the date of interview in the newspaper 'Dainik Bhaskar' is concerned, no date has been given by the respondents as to on which date, the information with regard to the date of interview, was published in the newspaper. The petitioner immediately submitted representations (Annexs.4 & 5 respectively), ventilating his grievances that on account of the fault on the part of the respondents, call letter was communicated to him after completion of the interview, but his representations were not considered by the

> respondents. Thus, in this view of the matter, the respondents have denied the legitimate claim of the petitioner and violated the principles of natural justice."

Similarly in the case of Alka Bohra vs. State of Rajasthan & Ors. (supra) this Court in para 7 has held as under:-

> "**7.** Counsel for the respondent No.3 has stated that she did not receive the interview call letter before 20.9.1993 and it was only on 20.9.1993 that she received the call letter. She immediately contacted the respondent No.2 on telephone and intimated him about the late receipt of the interview call letter and she was permitted to appear on 21.9.1993 for interview. She appeared on 21.9.1993 and her testimonials were checked. Further argument of the learned counsel for the respondent No.3 is that her merit had already been calculated and on 20.9.1993 the only thing which was to be done was to check the testimonials. Nothing substantial was to be done and only verification of the testimonials was required to be done. Therefore, her non-appearance on 20.9.1993 tentamounts to no irregularity on her part. Further she was in the merit and she did not appear for interview on 20.9.1993 as she received the call letter on 20.9.1993 only and after receiving the call letter she contacted the respondent No.2 telephonically and informed about the position and the respondent No.2 having attended her telephone has permitted her to appear for interview on 21.9.1993 then it should be deemed that process of selection was going on and it could not come to an end and it was

> within the power of respondent No.2 to extend the date of appearance because this date was neither a statutory date nor a date which was inflexible. In this view of the matter, the writ petition deserves to be dismissed."

In the present case, it appears that there were no marks and weightage for interview and therefore the interview was a mere ritual. It was an interview only in the name sake otherwise the purpose of calling the candidate was simply to verify the credential. In the facts of the present case, it is clearly evident that though the call letter was dispatched from Alwar on 01st September, 2003 but it was received to petitioner on 05th September, 2003. In view of what has been held by this Court in similar cases cited supra, I do not see any good reason to take different view.

In view considered opinion therefore, the writ petition deserves to be allowed and is accordingly allowed. The respondents are directed to consider the case of the petitioner for appointment by requiring him to appear before them with his original documents/credentials on any date which they may

now fix for verification thereof and if any candidate lower than him in the merit list is found to have been appointed, also appoint him in accordance with law. In the case of appointment being offered to the petitioner, he shall be only entitled to notional benefits for the intervening period although he would get the seniority from the date of appointment of the person immediately below him in the merit.

In the result the writ petition is allowed as directed above with no order as to costs.

[MOHAMMAD RAFIQ],J.

AKC.